

Order

Michigan Supreme Court
Lansing, Michigan

October 13, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-34

Amendments of Rule 2, Rule 3,
Rule 4, Rule 5, Rule 6, and Rule 7
and Addition of Rule 3a and Rule
4a of the Rules for the Board of
Law Examiners

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and additions of Rule 3a and Rule 4a of the Rules for the Board of Law Examiners are adopted, effective March 1, 2022, and will be in effect for the first time for the July 2022 administration of the bar examination in Michigan.

[Additions to the text are indicated in underlining and
deleted text is shown by strikeover.]

Rule 2. Admission by Examination

(A)-(C) [Unchanged.]

(D) Every applicant for admission must achieve a passing score, as determined by the board, on the Multistate Professional Responsibility Examination (MPRE) prepared and administered by the National Conference of Bar Examiners.

(E)-(F) [Unchanged.]

Rule 3. Examination Administration~~Subjects and Grading~~

(A) The examination shall be the Uniform Bar Examination (UBE) as prepared and defined by the NCBE and administered on dates and under regulations set by NCBE. The UBE consists of two sections:

- (1) The Multistate Bar Examination (MBE)~~prepared by the National Conference of Bar Examiners and administered on dates and under regulations set by the Conference.~~
- (2) The Multistate Essay Examination (MEE)
- (3) Two Multistate Performance Test items (MPT)

- (2) ~~An essay examination prepared by or under the supervision of the Board or by law professors selected by the Board, on these subjects:~~
- (a) ~~Real and Personal Property~~
 - (b) ~~Wills and Trusts~~
 - (c) ~~Contracts~~
 - (d) ~~Constitutional Law~~
 - (e) ~~Criminal Law and Procedure~~
 - (f) ~~Corporations, Partnerships, and Agency~~
 - (g) ~~Evidence~~
 - (h) ~~Creditor's Rights, including mortgages, garnishments and attachments~~
 - (i) ~~Practice and Procedure, trial and appellate, state and federal~~
 - (j) ~~Equity~~
 - (k) ~~Torts (including no fault)~~
 - (l) ~~The sales, negotiable instruments, and secured transactions articles of the Uniform Commercial Code~~
 - (m) ~~Michigan Rules of Professional Conduct~~
 - (n) ~~Domestic Relations~~
 - (o) ~~Conflicts of Laws~~
 - (p) ~~Worker's Compensation~~
- (B) The ~~NCBENational Conference of Bar Examiners~~ will grade the ~~MBEMultistate section~~. The Board or its agents will grade the MEE and the MPTessay section, with the Board having final responsibility. The Board will adopt policies for grading that are consistent with the sound testing practices followed by all jurisdictions that administer the UBE. The policies shall include a provision for the

NCBE to convert the raw scores on the written portion of an examination to the MBE scale by the methodology used for UBE jurisdictions. The Board will determine a method for combining the grades and selecting a passing score.

- (C) To earn a portable UBE score that is transferable to other UBE jurisdictions, persons taking the UBE in Michigan shall sit for and take all components of the bar examination in a single administration.
- (D) An applicant's raw bar examination score shall be provided to the NCBE to calculate scaled scores. Upon request by an applicant, the NCBE will certify and transfer the applicant's scaled score, scaled MBE score, and total UBE score to other UBE jurisdictions. The NCBE may also release to an applicant, upon request by the applicant, the applicant's scaled MBE score, scaled written score, and total UBE score.

[NEW] Rule 3a. Michigan Law Component

- (A) Before being admitted to the practice of law in Michigan by UBE examination, by transferred UBE score, or on Application for Admission Without Examination, an applicant shall take any Michigan Law Component course required by the Board and provide proof of completion to the Board of Law Examiner's office.
- (B) If a Michigan Law Component course is required by the Board, the course shall contain relevant Michigan-specific topics attorneys licensed in Michigan are reasonably expected to know as determined by the Board. The course shall be in the form prescribed by the Board.
- (C) An applicant shall pay any fee determined by the Board that is associated with taking the Michigan Law Component.

Rule 4. Post-Examination Procedures; Appeal; Application for Re-Examination

- (A) Except where a mathematical or clerical error has been made, scores determined in accordance with these rules shall be final. In the unlikely event of a mathematical or clerical error, the Board shall issue a corrected score.
- (~~B~~A) The Executive Director will release examination results at the Board's direction. Any blue books will be kept for 3 months after results are released.
- (~~B~~) ~~Within 30 days after the day the results are released, the applicant may ask the Board to reconsider the applicant's essay grades. The applicant shall file with the Executive Director two (2) copies of~~

- (1) ~~the request;~~
 - (2) ~~the answer given in the applicant's blue books; and~~
 - (3) ~~an explanation why the applicant deserves a higher grade.~~
- (C) An applicant who has failed and seeks to retake the UBE in Michigan shall file an Application for Reexamination. An applicant for re-examination may obtain an application from the Executive Director. The application must be filed at least sixty (60) days before the examination. If the applicant's character and fitness clearance is more than three (3) years old, the applicant must be approved by the State Bar Committee on Character and Fitness.

[New] Rule 4a. Admission by Transferred UBE Score

- (A) An applicant may apply for admission to the practice of law in Michigan by filing an application to transfer a UBE score if all of the following apply:
- (1) The applicant earned a UBE score that meets or exceeds the minimum score required by the Board of Law Examiners.
 - (2) The score that the individual elects to use was achieved on a uniform bar examination administered within the 3 years immediately preceding the uniform bar examination in this state for which the individual would otherwise sit.
 - (3) The applicant has taken the MPRE prepared and administered by the NCBE and earned the scaled score required by the Board.
 - (4) The applicant has met all requirements of these rules, including successful completion of any Michigan Law Component.
- (B) An applicant who desires to be admitted as a member of the Michigan bar shall file with the Board of Law Examiners an Application for Admission to the Practice of Law by Transferred UBE Score. The application shall include the following:
- (1) An affidavit stating that the applicant has studied the Michigan Court Rules, the Michigan Rules of Professional Conduct, and the Michigan Code of Judicial Conduct.
 - (2) An application provided for use by the State Bar of Michigan Standing Committee on Character and Fitness for the purpose of conducting a character and fitness investigation of the applicant and the required fee;

- (3) An application fee as prescribed by BLE Rule 6.
- (C) An applicant under review shall have a continuing duty to update the information contained in the State Bar of Michigan Standing Committee on Character and Fitness application and to report promptly to the State Bar of Michigan Standing Committee on Character and Fitness all changes or additions to information in the application that occur prior to the applicant's admission to practice.
- (D) An applicant under this section shall successfully complete any required Michigan Law Component within the time period required by the Board.
- (E) An applicant under this section who has been approved for admission under this section shall be entitled to take the oath of office under Rule 15, section 3, of the Rules Concerning the State Bar of Michigan. An applicant under this section shall not engage in the practice of law in Michigan before approval and administration of the oath. An application under this section shall be considered withdrawn if the applicant does not take the oath of office within three years after being approved for admission to the practice of law in Michigan.

Rule 5. Admission Without Examination

- (A) An applicant for admission without examination must
 - (1)-(4) [Unchanged.]
 - (5) have, after being licensed and for 3 of the 5 years preceding the application,
 - (a)-(c) [Unchanged.]
 - The ~~Board~~^{Supreme Court} may, for good cause, increase the 5-year period. Active duty in the United States armed forces not satisfying Rule 5(A)(5)(c) may be excluded when computing the 5-year period.
 - (6) Complete any Michigan Law Component requirement set out in Rule 3a.
- (B)-(C) [Unchanged.]
- (D) An applicant for whom a certificate of admission is issued must take the oath and become a member of the State Bar of Michigan within three years of the date the certificate is issued. Otherwise, the applicant must reapply.
- (D)-(E) [Relettered (E)-(F) but otherwise unchanged.]

Rule 6. Fees

The fees are as follows:

- (A) ~~an application for examination under the Uniform Bar Exam~~, \$400 and an additional fee for the late filing of an application or transfer of an application for examination, \$100; an application for re-examination, \$300;
- (B) application for admission by transferred UBE score, \$400;
- (C) ~~an~~ application for recertification, \$300;
- (D) ~~an~~ application for admission without examination, \$800 plus the requisite fee for the National Conference of Bar Examiners' character report. Certified checks or money orders must be payable to the State of Michigan. Online bar examination payments for first time takers must be paid by credit card.
- (E) Any fee for a Michigan law component as determined by the Board.

Rule 7. Exceptions

An applicant may ask the board to waive any requirement except the payment of fees and the administration of the UBE. The applicant must demonstrate why the request should be granted.

Staff comment: The amendments implement a Uniform Bar Examination in Michigan with implementation set for the July 2022 administration of the bar examination. Delay in companion legislative action may defer implementation of these rules.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

CAVANAGH, J. (*concurring*). I concur in the Court's order adopting amendments to Rule 2, Rule 3, Rule 4, Rule 5, Rule 6, and Rule 7 and adding Rule 3a and Rule 4a to the Rules for the Board of Law Examiners. As a result, Michigan now joins the ranks of 38 other jurisdictions who utilize the Uniform Bar Examination. This change seeks to ensure a standard level of competency for lawyers across the country, allows for score portability, and makes the practice of law more accessible to law school graduates facing employment challenges and rising debt. I write to briefly address the concerns expressed by my dissenting colleague. First, while I appreciate the reservation in regard to whether the practical-skills-oriented Multistate Performance Test (MPT) portion of the Uniform Bar Examination is adequate to assess an applicant's ability to practice law in the real world,

the same concerns are certainly present in any standardized test that operates under artificial time constraints. While not a perfect measure of competence, the MPT is the best tool we possess at present to gauge practical lawyering skills beyond the ability to memorize and apply principles of law. Second, I emphasize that today's rule change neither prohibits nor discourages the Board of Law Examiners (BLE) from adopting a Michigan-specific component to administer in addition to the Uniform Bar Examination. As Rule 3a provides, an applicant to the State Bar of Michigan will be required to take any Michigan law component required by the BLE in order to be admitted to practice in this state. In keeping with the concerns expressed by my colleague, I urge the BLE to ensure that the bar examination will continue to serve the interests of new attorneys as well as their future Michigan clientele.

BERNSTEIN, J. (*dissenting*). I do not support the implementation of the Uniform Bar Examination in Michigan for two reasons. First, although I understand the purpose behind a practical-skills-oriented performance test, I struggle to understand how testing those skills under the artificial time constraints set by a standardized test would allow the Board of Law Examiners to meaningfully assess an applicant's ability to practice. Second, it is yet unclear whether the Board of Law Examiners will adopt a Michigan-specific component to an otherwise multistate test. I strongly believe that the Michigan-specific essay component of our current bar examination promotes a comprehensive introduction to Michigan law. Any changes we make to the bar examination should keep in mind the best interests of both new attorneys and the public they will be serving; I believe both groups stand to lose if we fail to focus on Michigan law in the Michigan bar examination.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 13, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk